Editor's note: Overruled by Mobil Oil Corp., 35 IBLA 265 (June 2, 1978)

C. E. KNOWLES
R. E. DARLING

IBLA 72-33 Decided October 5, 1971

Oil and Gas Leases: Termination

Pursuant to 30 U.S.C. § 188(b) (1970), where an oil or gas lessee fails to make his annual rental payment at the appropriate land office on or before the anniversary date, the lease will be terminated by operation of law.

Oil and Gas Leases: Reinstatement

Pursuant to 30 U.S.C. § 188(c) (1970), the Secretary of the Interior, in determining whether to reinstate a lease which has been terminated by operation of law, may consider the mailing of an oil and gas lease annual rental payment as "tendered" where cogent evidence compels the conclusion that the payment was properly addressed, with postage prepaid, and mailed 20 days before the due date, although said payment was never received by the appropriate land office.

IBLA 72-33	:	Nevada 062375
C. E. KNOWLES R. E. DARLING	:	Petition for reinstatement of lease granted
	:	Reversed and remanded

DECISION

C. E. Knowles and R. E. Darling have appealed to the Secretary of the Interior from the decision of July 23, 1971, by the Nevada state land office, wherein their petition for reinstatement of oil and gas lease, Nev-062375, was denied.

Appellants are the holders of oil and gas leases covering some 50,000 acres in Nevada. The land included in Nev-062375 is a tract of approximately 2,400 acres situated in the midst of these holdings. The rental on these leases, heretofore timely paid by the appellants, has amounted to nearly $25,000 annually. On June 23, 1971, Robert J. Cruse, attorney for the appellants, was informed by the Geological Survey that the aforementioned lease, Nev-062375, having been terminated, the well situated thereon should be plugged. This was appellants' first notification that their lease had been terminated. It is with that termination this decision exclusively deals. Upon receipt of the letter from the Survey, Cruse, on behalf of his clients, immediately contacted the Reno, Nevada, land office and was informed that the lease had been terminated by operation of law 1/ on June 1, 1971, for non-payment of the yearly rental due on that date.

On June 28, 1971, Cruse appeared personally at the Reno land office, at which time he filed a petition for reinstatement and tendered a $1,200 check representing the past due rental. He submitted affidavits setting forth the facts noted above and the following:

1/ 84 Stat. 206, 30 U.S.C. § 188 (1970).

In his relationship as attorney for the appellants, Cruse held for them a trust account from which he was instructed to make annual rental payments on the aforementioned leases as they came due. On April 26, 1970, he executed a check drawn upon the trust account in the amount of $1,200 to be forwarded to the land office in payment of the annual rental on lease Nev-062375. That check was mailed to the land office on May 11, 1971.

Cruse attached as exhibits a copy of the purported transmittal letter sent to the land office on May 11, a copy of the stub from the purportedly sent check, a copy of the letter received by him on June 23, from the Geological Survey, and an affidavit by his secretary wherein she acknowledged having typed the trust account check and transmittal letter and verified having mailed the two together in a properly addressed envelope, with postage prepaid, to the Reno land office on May 11, 1971.

Both in their original petition for reinstatement and the appeal now before us from the denial of that petition, appellants have raised two basic questions of law, namely:

> (1) Whether or not mailing the annual rental due on lease, Nevada 062375, constituted a payment or tender as defined in 84 Stat. 206, 30 U.S.C. § 188 (1970); and
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> (2) Whether proposed rules implementing 84 Stat. 206, 30 U.S.C. 188 as set forth in 43 CFR 3108.2-1 and published in the Federal Register on February 4, 1971, or any subsequent rules promulgated and adopted by the Department of Interior allow the termination of a lease without the Bureau of Land Management having first sent a "Notice of Termination of Lease due to Late Payment of Rental" to the lessees. 2/

While we cannot agree with all the propositions set forth by the appellants, we are in accord with their contention that the decision by the land office was in error.

Prior to the May 12, 1970, amendments to the Mineral Leasing Act, § 31, as amended, 30 U.S.C. § 188 (1964), the law governing

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2/ Appellants' "Statement of Grounds and Reasons," page 3.

oil and gas lease termination cases, was quite 'unambiguous. It consequently received a strict interpretation and application by the Department and the courts.

Section 188 (b) was unequivocal:

> . . . [U]pon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law.

In a memorandum of July 19, 1971, submitted by the Field Solicitor to the Reno land office at the latter's behest, it was emphasized that prior to the May 1970 amendments,

> . . . [T]he Department had no latitude in applying the automatic termination clause . . .; that termination is required for failure to pay the annual rental in advance not later than the anniversary date of the lease; actual receipt in the Land Office of the rental payment is required within the time stated even though payment may have been mailed in time to be received timely but through delay was not received timely. No exceptions are permitted because payments are not received. The Department has no authority to waive or modify otherwise the express statutory provision of § 31 [3/] and, prior to the 1970 Act, had no authority to reinstate the terminated lease upon receipt of subsequently tendered payment. Duncan Miller, A-31095 (February 2, 1970); Union Texas Petroleum, A-30970 (March 5, 1969); Joan Witmer, A-30986 (March 3, 1969); Duncan Miller, A-30924 (November 13, 1968); Duncan Miller, A-30966 (October 29, 1968); M. B. Dreblow, A-30723 (April 18, 1967); Billy Mathis, A-30512 (July 6, 1966).

3/ Section 31 of the Mineral Leasing Act of 1920, as amended by the Act of August 8, 1946 (60 Stat. 956, 30 U.S.C. § 188 (1946), the Act of July 29, 1954, (68 Stat. 585; 30 U.S.C. § 188 (1964)); further amended by the Act of October 15, 1962 (76 Stat. 943; 30 U.S.C. § 188 (1964)).

The May 1970 amendment to the Act provided relief from the prior provisions. In part, it reads as follows:

> (c) Where any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if--
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> (1) a petition for reinstatement, together with the required rental, including back rental accruing from the date of termination of the lease, is filed with the Secretary; and
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> (2) no valid lease has been issued prior to the filing of said petition. . . .
> 30 U.S.C. § 188(c) (1970) (emphasis added).

Congressional motivation behind the enactment of this amendment was to provide an administrative remedy for the harsh and often inequitable results wrought by the automatic termination provisions contained in the earlier legislation. In a statement from the floor on April 19, 1970, Representative Wayne Aspinall of Colorado, Chairman of the House Committee on Interior and Insular Affairs, noted that due to the strict interpretation given § 188 by the Department,

> . . . each year numerous private relief bills are introduced. The majority of these . . . warrant relief. As I recall, we have brought bills before this body where the rental was short by 15 cents. . . . In other situations the rental was mailed in ample time but the letter was misdirected to the wrong office. These are some of the situations that this proposed bill would eliminate. 4/

4/ 116 Cong. Rec. H-3253 (daily ed. Apr. 20, 1970).

He concluded that the ". . . legislation is needed to give the Secretary of the Interior a certain amount of discretionary authority to reinstate leases and to relieve Congress of the burden of considering many individual private bills." 5/

As noted above, the language of the prior law was unequivocal. The rental had to be paid when due. That is, the Bureau of Land Management had to receive actual payment in its office on or before the due date. The 1970 amendment has not altered the rule regarding automatic termination, except as to nominal deficiencies or deficiencies caused by departmental mistake. These exceptions relate only to the amount of payment. Section 188(b) still requires payment, however deficient, on or before the anniversary date.

The argument set forth by appellants is premised on the assumption that since regulations have never been adopted covering the proper mode of payment, the remittance before the anniversary via the U.S. mails is equivalent to payment, whether it reaches the land office or not. The cases cited by the Field Solicitor, quoted above, negate that argument. 6/ Appellants' rental payment was due at the land office no later than the close of business, June 1, 1971. When no payment was received, § 188(b) automatically terminated appellants' lease. 7/ The land office had no discretion in the matter. To this extent we agree with its decision.

The issue then raised is whether mailing the rental payment before the anniversary date invokes the amended reinstatement provisions of § 188(c). As originally enacted, this section permitted reinstatement only if a petition therefor was filed within 180 days after the

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5/ Id.

6/ But see H. C. Hathorn, A-30257 (February 3, 1965), wherein it was held that a payment made by mail was presumed to have been made on the day it would ordinarily have been received, although it was actually received the following day.

7/ S. Rept. 91-205, concerning S. 1193, which culminated in the Act of May 12, 1970, explicitly recognized the operation of the automatic termination provision of 30 U.S.C. § 188 (1964). Where contemporaneous and practical interpretation has stood unchallenged for a considerable length of time it will be regarded as of great importance in arriving at the proper construction of a statute. Sutherland, Statutory Construction § 5107 (3d ed. 1943). Where Congress reenacts a statute, the previous administrative interpretation is regarded as presumptively the correct interpretation of the law. Id. § 5109; cf. United States v. Anderson, 269 U.S. 422 (1926).

effective date of the Act, October 15, 1962. P.L. 87-822, § 1, 76 Stat. 943. Thus, no lease which terminated under § 188(b) could be reinstated after April 13, 1963, unless a petition therefor had been filed and the required rental paid before that date. In order that he might remedy the inequities often resulting from automatic termination, Congress in 1970 gave to the Secretary authority to reinstate terminated leases under certain conditions.

Section 188(c) now provides that a terminated lease may be reinstated if the "rental is paid on or tendered within twenty days" after the anniversary date. The word "tendered" was not in the statute before amendment, nor does it appear elsewhere in the amended version. It appears only as an alternative to "paid" in the reinstatement provision, § 188(c). Thus, it must mean something other than "paid." In construing "tendered" the objective of the legislation in which the term is utilized is a compelling consideration. The Senate report stated:

> S. 1193 is general legislation designed to provide authority to do administratively what heretofore had to be done through the legislative process. S. Rept. 91-205, p. 2.

Manifestly, Congress intended the Act of May 12, 1970, to be construed in a manner which would obviate the need for private legislation. S. Rept. 91-205 explicitly recognized that "delay in the mails" was a cause of late payment. It follows that loss in the mails, if timely and proper mailing is proven, warrants comparable consideration.

A cardinal principle of statutory construction requires "that effect must be given, if possible, to every word, clause, and sentence of a statute." 1 Kent, Commentaries 462 (13th Ed. 1884) (emphasis added). What effect then is to be given to the term "tendered?" It is conceivable that the word was intended to mean solely a proffer refused by the land office. Concededly, this had happened in a few instances. It does not necessarily follow, however, that the term only embraces that situation.

In light of clear legislative intent, we hold that a timely attempt to perform by a method customarily used for such performance, which manifests a present intent and ability to perform, constitutes a tender. 8/ Since the statute envisages that to be

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8/ The courts have been anything but unanimous in their opinions as to whether tender has taken place in various situations. Some have held that a tender amounts to an offer to perform a contract or pay a debt, coupled with the present ability to do such.

eligible for a reinstatement of his lease under 30 U.S.C. § 188(c) (1970), the lessee must pay or tender the full rental within 20 days after the anniversary date of the lease, a fortiori, if such tender is made prior to the anniversary date of the lease, the 20-day requirement has been satisfied. In the instant case, cogent evidence establishes that the appellant placed his annual rental payment in the United States mails, properly stamped and addressed, 20 days before the anniversary date. In the circumstances, we find that the 20-day requirement was met.

Where disputes regarding termination of oil and gas leases have arisen between private parties, the courts have consistently held that:

> . . . [W]here the lessee . . . in good faith manifests his intention to continue the lease by undertaking to pay such rental, through the method and means customarily used in such transactions, in ample time for the payment to reach the lessor or the agreed depository on or before the due date, but due to accident or mistake such payment fails to reach the lessor in time, the lease is not because of such failure automatically terminated. This is true because the acts of the lessee manifest an intention not to terminate the lease.
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> Twyford v. Whitchurch, 132 F.2d 819, 822 (10th Cir. 1942). See also, Gloyd v. Midwest Refining Co., 62 F.2d 483 (10th Cir. 1933); Holland et al. v. Anderson Bros. Corp., 207 F.2d 830 (10th Cir. 1953).

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fn. 8 (cont.)
See Hogan et al. v. Barnett & Co., Ltd, 179 F.2d 836 (8th Cir. 1950); Caplan v. Shaw, 30 S.E.2d 132 (W. Va. 1944); McClain v. Batton, 40 S.E. 509 (W. Va. 1901); Wardlaw et al. v. Woodruff, 165 S.E. 557, 560 (Ga. 1932); Universal Credit Co. v. Cole, 146 S.W.2d 222, 227 (Tex. 1940). We adopt this view. However, other courts have imposed a greater duty upon the tenderor, in that control by him over the tendered item must be completely relinquished and the tenderee be given immediate physical control. See Kerr v. United States, 108 F.2d 585, 586 (D.C. Cir. 1939); Greenwood et al. v. Watson et al., 171 F. 619 (3rd Cir. 1909); Mark v. Rizzo, 162 N.Y.S. 2d 633 (1957); Baucum v. Great American Insurance Company of New York, 370 S.W.2d, 863 (Tex. 1963).

As previously indicated, Congress manifested an intention to pursue less rigid and more equitable standards by the enactment of the 1970 modifications to 30 U.S.C. § 188. Gloyd, supra, involved a situation where an oil and gas lessee's check was mailed in ample time for it to be received in the usual course of business prior to the due date. It was lost in the mail and never delivered to the addressee. The Court, in reinstating the lease, stated as follows:

> When the lessee in an "unless" lease in good faith manifests his intention to continue the lease by undertaking to pay such rental through a method and means customarily used in such transactions, in ample time for the payment to reach the lessor or the agreed depository on or before the due date, but due to accident or mistake such payment fails to reach the lessor in time, the lease is not, because of such failure, automatically terminated. This is true because the acts of the lessee manifest an intention not to terminate the lease. Oldfield v. Gypsy Oil & Gas Co., 123 Okl. 293, 253 P. 298; Brazell v. Soucek, 130 Okl. 204, 266 P. 442. . . .
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> In the instant case the lease was given for a valuable and substantial consideration. The Midwest Company manifested its intention to continue the lease by undertaking to pay the rental through a method and means customarily used in such transactions, in ample time for the payment to reach Gloyd before the due date. The failure of such payment to reach Gloyd was due to an accident resulting from causes over which the Midwest Company had no control. It acted promptly on being advised of the default. Accident is one of the oldest heads of equity jurisprudence, and we are of the opinion that the Midwest Company was entitled to be relieved from the default and to have the lease reinstated on the equitable ground of accident. Pomeroy's Equity Jurisprudence, vol. 2 (4th Ed.) § 824.
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> 62 F.2d 486-487.

Appellants herein also acted promptly on notice of the non-payment. We construe such action as significant in attempting to resolve the good faith issue implicit in the circumstances of this case.

Appellants tendered their rental on May 11, 1971. If, according to § 188(c), the Secretary may reinstate a lease where proper tender is made twenty days after the due date (provided the conditions of subpart 1 and 2 are also met), then, certainly, a tender twenty days before the due date would be more than sufficient to bring the lessee within the ambit of 30 U.S.C. § 188(c) (1970). Stated slightly differently, while appellants did not pay the rental on time (pursuant to 30 U.S.C. § 188(b) (1970)), they did tender the rental before the due date and, therefore, within twenty days thereafter in accord with 30 U.S.C. § 188(c) (1970).

Because of the short period of time which has elapsed since the termination, no extension of the lease under 30 U.S.C. § 188(c)(2) (1970) is warranted.

The decision in this case rests upon its total factual background. It is not authority for the proposition that a mere allegation, unsupported by cogent evidence that the rental was actually mailed properly and timely, is sufficient to prove a tender within the ambit of the statute.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is reversed and the case remanded for action consistent with this decision.

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Newton Frishberg, Chairman

We concur:

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Frederick Fishman, Member

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Francis E. Mayhue, Member